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United Nations S/2003/729

Security Council

Distr.: General
18 July 2003

Original: English

Letter dated 16 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 23 April 2003 (S/2003/462).

The Counter-Terrorism Committee has received the attached third report from Malaysia submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 14 July 2003 from the Permanent Representative of Malaysia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to your letter S/AC.40/2003/MS/OC.235 of 11 April 2003, I have the honour to transmit to you the second supplementary report of Malaysia requested by the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001) (see enclosure).

Malaysia stands ready to provide the Committee with further information as required.

(*Signed*) **Rastam** Mohd Isa
Ambassador
Permanent Representative

Enclosure

Second supplementary report of Malaysia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)*

I. Implementation measures

Paragraph 1.2

In reply to subparagraph 1 (a) the supplementary report states that "If a criminal investigation is carried out by a police officer against an alleged terrorist under the Penal Code or any written law, such police officer can obtain information about the person from licensed institutions only by obtaining prior written consent from the Bank". Please provide a further explanation on this point and, in particular, the CTC would be grateful to know what happens to the investigation if the Bank refuses to give the information required by the police officer.

1. The Bank in the supplementary report refers to the Central Bank of Malaysia. The Central Bank assists police officers, law enforcement agencies and prosecutorial authorities in detecting, investigating and prosecuting terrorists or other criminals under the Penal Code or any other written law. The Central Bank authorizes licensed institutions pursuant to section 99(1)(i) of the Banking and Financial Institutions Act 1989 (BAFIA) to divulge information concerning the affairs or accounts of their customers without contravening the statutory obligation on secrecy imposed under section 97(1) of the BAFIA. Thus far, the Central Bank has not refused to facilitate any investigation carried out by the police against any alleged terrorist under the Penal Code or any other written law in Malaysia as such disclosure of information is permitted under the BAFIA.

2. In addition, section 100 of the BAFIA states that the requirement to observe secrecy does not limit the powers conferred upon the High Court or a judge of that Court by the Banker's Books (Evidence) Act 1949 (BBEA), nor does it prohibit obedience to an order made under BBEA. Section 7 of the BBEA states the following:

2.1 On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings.

2.2 An order under this section may be made either with or without issuing a summons to the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed unless the Court or Judge otherwise directs.

* Annexes are on file with the Secretariat and are available for consultation.

Paragraph 1.3

Effective implementation of paragraph 1 of the resolution requires that financial institutions and other intermediaries (for example lawyers, notaries and accountants, when engaged in brokering activities, as distinct from the provision of professional advice) should be under legal obligation to report suspicious transactions. The CTC notes from the supplementary report (page 5) that:

- **The Central Bank plans to include natural or legal persons, such as lawyers and accountants, as reporting institutions under the First Schedule to the Anti-Money Laundering Act 2001 (AMLA);**
- **The lawyers and accountants would then be compelled to report suspicious transactions under section 14(b) of the AMLA; and**
- **This can be done under section 85 of the AMLA, whereby the Minister of Finance has the power to amend the First Schedule.**

The CTC would be grateful to have a progress report on the measures taken by Malaysia to implement this requirement and bring its domestic legislation in line with the resolution.

1. Accountants and lawyers in Malaysia are mainly governed by their self-regulatory authorities (SRAs), namely the Malaysian Institute of Accountants (MIA) and the Malaysian Bar Council.

2. The Malaysian Institute of Accountants (MIA), established under the Accountants Act 1967, is the authoritative body regulating the accounting profession. A qualified person who wishes to hold himself or herself out as a Chartered Accountant or an accountant in Malaysia has to be registered with MIA.

3. Company auditors in Malaysia, before being licensed by the Ministry of Finance, have to be registered with MIA as Chartered Accountants or Licensed Accountants and must have valid practising certificates issued by MIA. Upon obtaining an audit licence and registering an audit firm with the Companies Commission of Malaysia (formerly the Registrar of Companies), the company auditor is required to register his or her firm with MIA.

4. MIA is responsible for promoting and regulating the accountancy profession in Malaysia. Additionally, MIA also actively participates in any legislative initiatives and developments spearheaded by the Securities Commission, the Kuala Lumpur Stock Exchange and the Central Bank of Malaysia relating to the regulation of the capital and financial markets and corporate governance, and by the Companies Commission of Malaysia relating to the regulation of companies pursuant to the Companies Act 1965.

5. The Malaysian Bar was established under the Legal Profession Act 1976. The management of the Malaysian Bar and of its funds is vested in the Bar Council. The admission of a "qualified person" as an advocate and solicitor in Malaysia is under the purview of the Malaysian Bar.

6. The Qualifying Board issues guidelines for the admission of advocates and solicitors and decides on the qualifications necessary for admission.

7. In view of the foregoing, the Central Bank of Malaysia has briefed the respective SRAs on the anti-money-laundering and anti-terrorist measures. This is to create awareness among the SRAs and to seek their support of the proposed

reporting obligations under the AMLA. The approach would be consultative and incremental, as further studies and information gathering is ongoing to ensure effective implementation of the reporting obligations.

Paragraph 1.4
The CTC would appreciate to be informed about the penalties that may be imposed for non-compliance with requirements to report suspicious transactions.

1. Section 22 of the AMLA provides the competent authority the power to enforce compliance on the reporting institutions. Any person who contravenes commits an offence and shall, on conviction, be liable to:

1.1 Fine not exceeding RM100,000; or

1.2 Imprisonment for a term not exceeding 6 months; or

1.3 Both

2. A further fine, not exceeding RM1,000 per day, will be imposed in the event the offence continues after conviction.

Paragraph 1.5
Effective implementation of paragraph 1 of the resolution also requires an appropriate monitoring group mechanism (involving for example, registration and auditing requirements) to ensure that the funds collected by organizations which have or claim to have charitable, social or cultural goals are not diverted to purposes other than their stated purposes, in particular to the financing of terrorism. The CTC would appreciate information from Malaysia on legislation and institutional mechanisms that are in place, or proposed, to deal with this aspect of the resolution.

1. The Registry of Societies Malaysia has in place a monitoring mechanism, whereby it is mandatory for every registered society of a charitable, social, cultural or voluntary nature to submit to the Registry their annual returns, which is inclusive of audited financial statements. Failure to submit the annual returns may result in the cancellation of a society. In addition, if a society is pursuing purposes other than their stated purposes, in particular the financing of terrorist activities, such activities may also render the society being cancelled.

2. The Registry is in the process of amending the legislation to further tighten the financial provisions under the Societies Act 1966. The amendments would require that the society to which any person, organization, government or agency of any government outside Malaysia has contributed any money, property, pecuniary benefit or advantage, to reveal the uses to which such resources are put, its application, utilization and recipients of any such resources. Failure to submit such information would render the society being cancelled.

3. In addition, if a society has any office bearer, adviser or employee who is involved in unlawful activities, including terrorist activities, the society must immediately disqualify the person from holding any such position in the society. Failure to do so may render the drastic action of cancellation of the society.

Paragraph 1.6
The supplementary report states that Malaysia is proposing to enact specific legislative provisions to criminalize the wilful provision of funds to carry out terrorist acts and prohibit Malaysian nationals or any person[s] and entities within their territories from making any funds available to carry out terrorist acts. The CTC would appreciate receiving a progress report on the steps taken by Malaysia to incorporate the above-mentioned requirements of subparagraphs 1(b) and (d) of the resolution into its domestic law.

Amendments to the Penal Code and the Anti-Money Laundering Act 2001 (AMLA) have been drafted and are scheduled to be tabled at the September 2003 Parliamentary sitting to incorporate the requirements of subparagraphs 1(b) and (d) of the resolution into domestic law.

Paragraph 1.7
The CTC would be grateful for a progress report on the steps taken or to be taken by Malaysia to incorporate the requirements of subparagraph 1(c) into its domestic law as the supplementary report (page 10) states that this matter is being undertaken by the Ministry of Home Affairs.

Amendments to the Anti-Money Laundering Act 2001 (AMLA) have been drafted and are scheduled to be tabled at the September 2003 Parliamentary sitting to incorporate the requirements of subparagraphs 1(c) into domestic law.

Paragraph 1.8
The CTC would appreciate receiving a copy of the guidelines, if any, issued by the National Coordination Committee to Counter Money Laundering (NCC) and a progress report on the objectives mentioned in the supplementary report, item 5, in reply to subparagraph 2(b) (page 14).

1. The National Coordination Committee to Counter Money Laundering (NCC) does not issue guidelines pertaining to anti-money-laundering or terrorist financing. The function of the NCC is to provide a platform where decisions and consensus can be obtained from member agencies. Each agency is responsible for conducting relevant research, provision of information, reporting on progress, and implementation of NCC decisions within their respective jurisdictions. To this effect, the respective regulatory and supervisory authority has issued various guidelines in relation to anti-money-laundering, particularly on the issue of "Know Your Customer". In our response to the United Nations Security Council resolution 1455 (2003), a list of guidelines issued to financial institutions in relation to customer due diligence was attached (see Attachment I).

2. In our ongoing efforts to expand the reporting institutions and predicate offences under the AMLA, new subsidiary legislation has been invoked. Please refer to Attachment II for details.

Paragraph 1.9

In reply to questions under subparagraphs 2(f) and 3(c), the supplementary report states that Malaysia's Mutual Assistance in Criminal Matters Act 2002 has not yet come into operation. The CTC would appreciate receiving an outline of the provisions of the above-mentioned Act, in particular how it deals with those aspects of the resolution.

1. The Mutual Assistance in Criminal Matters Act 2002 came into operation on 1 May 2003.

2. It is noted that subparagraph 2(f) requires States to afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceeding.

3. It is noted that subparagraph 3(c) calls upon States to cooperate, particularly through bilateral and multilateral arrangements and agreements to prevent and suppress terrorist attacks and take action against perpetrators of such acts.

4. The Act makes provision for mutual assistance in criminal matters between Malaysia and other countries. A copy of the Act has previously been submitted to the United Nations pursuant to General Assembly resolution 49/60.

5. The Act enables Malaysia to provide and obtain international assistance in criminal matters, including:

5.1 the provision and obtainment of evidence and things;

5.2 arrangements for persons to give evidence or to assist in criminal investigations;

5.3 the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence;

5.4 the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;

5.5 the execution of requests for search and seizure;

5.6 the location and identification of witnesses and suspects;

5.7 the service of process;

5.8 the identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious offence or a foreign serious offence;

5.9 the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence; and

5.10 the examination of things and premises.

6. The expression "criminal matters" and related terms are defined in section 2 as follows:

6.1 "criminal matter" means a criminal investigation, criminal proceedings or an ancillary criminal matter;

6.2 "ancillary criminal matter" means —

6.2.1 the restraining of dealing with, or the seizure, forfeiture or confiscation of, property in connection with a serious offence or a foreign serious offence; or

6.2.2 the obtaining, enforcement or satisfaction of a forfeiture order or a foreign forfeiture order.

6.3 "serious offence" means —

6.3.1 an offence under the Anti-Money Laundering Act 2001; or

6.3.2 an offence against the laws of Malaysia where the maximum penalty for the offence is death or the minimum term of imprisonment is not less than one year; or

6.3.3 any attempt, abetment or conspiracy to commit any of the specified offences.

6.4 "foreign serious offence" means an offence —

6.4.1 against the law of a prescribed foreign State stated in a certificate purporting to be issued by or on behalf of the Government of that prescribed foreign State; and

6.4.2 that consists of or includes activity which, if it had occurred in Malaysia, would have constituted a serious offence.

6.5 "prescribed foreign State" means —

6.5.1 a foreign State declared by the Minister, by an order made under section 17(1) of the Act to be a prescribed foreign State [i.e. a foreign State with which Malaysia has a mutual assistance in criminal matters treaty]; and

6.5.2 a foreign State in respect of which the Minister has issued a special direction under section 18 of the Act.

7. Section 17 empowers the Minister to declare a foreign State as a prescribed foreign State eligible to request assistance in a criminal matter from Malaysia if there is in force a treaty or other agreement between Malaysia and that foreign State under which that foreign State has agreed to provide assistance in criminal matters to Malaysia.

8. Section 18 empowers the Minister to give a special direction in writing, on the recommendation of the Attorney General that the Act applies to a particular foreign State, if there is no treaty or other agreement between Malaysia and that foreign State. This is an ad hoc arrangement and requests are considered on a case-by-case basis, generally on an undertaking that similar assistance will be accorded to Malaysia for a future request.

9. Section 4 makes it clear that the Act does not prevent or limit international assistance in criminal matters through other mechanisms and international organizations, such as Interpol.

10. Part III of the Act (sections 16 to 41) provides the details as to how requests to Malaysia for assistance are dealt with and executed:

10.1 Section 19 requires a request for assistance to be made to the Attorney General of Malaysia and specifies the requirements as to the content of the request.

10.2 Section 20(1) provides the mandatory grounds for refusal of a request by the Attorney General, while section 20(3) provides discretionary grounds on which the Attorney General may refuse assistance. These grounds reflect the norm in other jurisdictions, such as requests relating to investigations, prosecutions or punishment for offences of a political nature, lack of dual criminality, offence under military law only, investigations, etc. that prejudice a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions and on the ground that it would affect the sovereignty, security, public order or other essential public interest of Malaysia.

10.3 Section 21 limits the political offence exception.

10.4 Section 22 deals with taking evidence, while sections 23 to 26 deal with orders for the production of evidence.

10.5 Sections 27 and 28 deal with attendance by witnesses in the requesting State, including prisoners. With the advent of video-conferencing technology, the need to physically transfer persons between States should decrease.

10.6 Sections 29 and 30 deal with witnesses in transit.

10.7 Sections 31 to 34 deal with the enforcement of foreign forfeiture orders and the grant of restraint orders.

10.8 Sections 25 to 38 deal with requests for search and seizure.

10.9 Section 39 deals with requests for assistance in locating or identifying persons.

10.10 Sections 40 and 41 deal with assistance in the service of process.

11. Terrorist acts and terrorism financing offences as criminalized under the proposed Penal Code amendments would be considered serious offences and foreign serious offences for the purposes of the Act. Thus, assistance under the Act would be available in relation to investigations and criminal proceedings involving such offences, if the other conditions under the Act are satisfied.

12. Malaysia intends to pursue multilateral and bilateral mutual legal assistance treaties with like-minded countries under the Act. In this regard it is noted that Malaysia has proposed a multilateral mutual assistance in criminal matters treaty with like-minded countries in the ASEAN region. This proposal is still under discussion.

Paragraph 1.10

The supplementary report states that Malaysia has established an Inter-Agency Committee on International Terrorism to study how to ratify or accede to the remaining anti-terrorist instruments to which Malaysia is not yet a party. Please provide a progress report on the steps taken in order to become a party to the international instruments relating to terrorism to which Malaysia is not yet a party and on the progress made in enacting legislation to implement the instruments to which it has become a party.

1. The United Nations has adopted 12 Conventions and Protocols on international terrorism. Malaysia is already a State party to the following Conventions:

1.1 The 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft;

1.2 The 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft; and

1.3 The 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

2. Malaysia has also signed the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1971), supplementary to the Montreal Convention. The Ministry of Transport Malaysia is responsible for taking the appropriate actions to enable Malaysia to ratify this Protocol.

3. The Inter-Agency Committee on International Terrorism, chaired by the Ministry of Foreign Affairs, has completed the review on six other Conventions and Protocols. Appropriate recommendations are being made to the Government for Malaysia to accede to all the Conventions by the end of the year 2003. To date, the Government of Malaysia has agreed that Malaysia accede to the following Conventions, subject to the completion of certain legislative and administrative measures:

3.1 International Convention for the Suppression of the Financing of Terrorism 1999;

3.2 International Convention for the Suppression of Terrorist Bombings 1997;

3.3 International Convention against the Taking of Hostages 1979; and

3.4 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973.

4. As for the Convention on the Physical Protection of Nuclear Material and the Convention on the Marking of Plastic Explosives for the Purpose of Detection, appropriate recommendations to the Government of Malaysia are being made for Malaysia to accede to these Conventions.

Paragraph 1.11
Operative paragraph 4 of the resolution notes with concern the close connection which exists, inter alia, between international terrorism and the illegal movements of nuclear, chemical, biological and other potentially deadly materials. In this regard, the operative paragraph emphasizes the need to enhance the coordination of efforts at the national, international, regional and subregional levels in order to strengthen a global response to this serious challenge and threat to international security. The CTC would appreciate hearing what steps, if any, Malaysia has taken to address the contents of operative paragraph 4.

1. The activities of manufacturing, trading, producing, processing, purchasing, owning, using, transporting, transferring, handling, selling, storing, importing or exporting, as well as possessing or disposing radioactive and nuclear materials in Malaysia, are under the supervision of the Atomic Energy Licensing Board, Malaysia (AELB) and are regulated under the following legislation:

1.1 Atomic Energy Licensing Act 1984;

1.2 Radiation Protection (Licensing) Regulations 1986;

1.3 Radiation Protection (Transportation) Regulations 1989.

2. With the cooperation of the Royal Malaysian Customs, the import/export of the materials requires the prior permission and clearance from the AELB. The possession, selling and disposal of radioactive materials have to be reported to the AELB.

3. In order to keep abreast with the latest development on the security of radioactive materials, Malaysia has sent officials from the AELB, Malaysian Institute for Nuclear Technology Research (MINT) and Royal Malaysian Police to participate at the International Conference on Security of Radioactive Sources that was held in Vienna, Austria from 10 to 13 March 2003.